

**Title 20—DEPARTMENT OF INSURANCE
Division 100—Insurer Conduct
Chapter 8—Market Conduct Examinations**

PROPOSED RULE

20 CSR 100-8.018 Post-Examination Procedure

PURPOSE: This rule implements the purposes of section 374.185, RSMo, and establishes uniform post-examination standards for the director and the company following a market conduct examination pursuant to sections 374.202 to 374.207, RSMo.

(1) The post-examination procedure shall be conducted in a manner consistent with the purposes of section 374.185, RSMo. In accordance with the NAIC market conduct uniform examination procedures, the director shall require the following timelines and procedures following the completion of an examination:

(A) No later than fifty-five (55) days following completion of the examination, the examiner-in-charge shall file with the director a verified draft report of examination under oath. Thereafter, the examiner-in-charge shall deliver the draft report to the company within sixty (60) days of the completion of the examination together with a notice which shall afford the company examined a reasonable opportunity of not more than thirty (30) days to make a written submission or rebuttal with respect to any matters contained in the examination report.

(B) Completion of the examination shall be defined as the date the division of insurance market regulation confirms in writing that the examination is completed.

(C) The company shall respond with written comments within thirty (30) days of receipt of the draft report.

(D) The division of insurance market regulation shall make a good faith effort to resolve issues and prepare a final report within thirty (30) days of receipt of the company's written comments, unless a mutual agreement is reached to extend the deadline.

(E) The division may modify the examination findings and finalize the report, as appropriate.

(F) The company shall, within thirty (30) days, accept the final report, accept the findings of the report, file written comments, or petition to modify the findings with a request for hearing. The director may allow an additional thirty (30) days if requested by the company. Any petition to modify the findings with a hearing request shall be made in writing and a hearing shall be held. After a hearing the director shall issue final examination findings.

(G) Within thirty (30) days of the end of the period allowed for the receipt of an acceptance or comments by the company or following a hearing, the director shall fully consider and review the report, together with any written comments and any relevant portions of the examiner's work papers and enter an order: examination report as filed or with modification or corrections. If the examination report reveals that the company is operating in violation of any law, regulation or prior order of the director, the director may issue an order for any legal or regulatory action as the director deems appropriate, provided that this order shall be a confidential internal order directing the department to take certain action, or the company and the

division of insurance market regulation may negotiate a consent order, curative order or settlement agreement. Any such order or agreement shall be final once issued or approved by the director;

2. Rejecting the examination report with directions to the examiners to reopen the examination for purposes of obtaining additional information, and requiring the submission of either a new report or a supplemental report; or

3. For an investigatory hearing with no less than twenty (20) days notice to the company for purposes of obtaining additional information and testimony.

(2) The final written and electronic market conduct report shall include the company's written response and any negotiated text of the examination report. The company is not obligated to submit a response. References to specific individuals by name shall be limited to an acknowledgment of their involvement in the conduct of the examination.

(3) All orders entered pursuant to subsection (G) of section (1) shall be accompanied by findings and conclusions resulting from the director's consideration and review of the examination report, relevant examiner work papers and written comments, if any. A finding issued under paragraph (F) of section (1) shall not be considered a final order. Any order issued under paragraph 1 of subsection (G) of section (1) shall be considered a final administrative decision and may be appealed pursuant to section 374.055, RSMo, and shall be served upon the company by certified mail, together with a copy of the final examination report. Within thirty (30) days of the issuance of the final findings, the company shall file affidavits executed by each of its directors stating under oath that they have received a copy of the final report and related orders.

(4) In conducting an investigatory hearing pursuant to paragraph 3 of subsection (G) of section (1): (A) The hearing shall proceed expeditiously with discovery by the company limited to the examiner's work papers which tend to substantiate any assertions set forth in any written submission or rebuttal.

(B) The director may issue subpoenas for the attendance of any witnesses or the production of any documents deemed relevant to the investigation whether under the control of the department, the company or other persons. The documents produced shall be included in the record, and testimony taken by the director shall be under oath and preserved for the record.

(C) The provisions of this section shall not require the director to disclose any information or records which would indicate or show the existence of any investigation or activity of a criminal justice agency. (D) The division of insurance market regulation shall proceed with evidence, including representatives of the company. Thereafter, the company may present testimony relevant to the investigation.

(E) The company and the division shall be permitted to make closing statements.

AUTHORITY: sections 374.045, RSMo (2000), 374.185, RSMo (Supp. 2007) and 374.205, RSMo (2000).

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.
NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing

will be held on this proposed rule at 9 a.m. on June 12, 2008. The public hearing will be held at the Harry S Truman State Office Building, Room 530, 301 West High Street, Jefferson City, Missouri. Opportunities to be heard at the hearing shall be afforded to any interested person. Interested persons, whether or not heard, may submit a written statement in support of or in opposition to the proposed rule, until 5:00 p.m. on June 12, 2008. Written statements shall be sent to Tamara W. Kopp, Department of Insurance, Financial Institutions and Professional Registration, PO Box 690, Jefferson City, MO 65102.

SPECIAL NEEDS: If you have any special needs addressed by the Americans With Disabilities Act, please notify us at (573) 751-6798 or (573) 751-2619 at least five (5) working days prior to the hearing.